

**Department of State Health Services  
Council Agenda Memo for State Health Services Council  
February 26-27, 2014**

**Agenda Item Title:** New rules concerning the criteria for approving trainers of mental health first aid services

**Agenda Number:** 4.a

**Recommended Council Action:**

☐ For Discussion Only

☒ For Discussion and Action by the Council

**Background:**

Children's Mental Health Program Services Section is located within the Mental Health and Substance Abuse Division. The Program Services Section develops and implements programs concerning the provision of mental health community services. The Division develops standards to ensure that the 37 local mental health authorities (LMHAs) and the local behavioral health authority (LBHA), which is a managed care organization, that contract directly with DSHS provide appropriate, adequate mental health services to the citizens of Texas.

The data reported by the LMHAs and the LBHA, may include mental health consumer functioning, employment, school attendance, or involvement in the juvenile justice system. The mental health consumers are regularly assessed as a part of treatment and their outcomes are compared to previous assessments to determine improvement in a consumer's mental health status.

Funding for the mental health first aid (MHFA) training services comes from state general revenue funds in the amount of \$5 million (\$2.5 million per year for the biennium).

**Summary:**

The purpose of the new rules is to establish requirements for a person to be approved by DSHS to train employees or contractors of LMHAs as MHFA trainers. The trainers will then provide training to educators within their local independent school districts. The rules promote increased access for school-aged children to providers trained in the evidence-based practice of MHFA.

House Bill 3793, 83<sup>rd</sup> Legislature, Regular Session, 2013, amends the Texas Health and Safety Code (THSC), Chapter 1001, by adding Subchapter H, which establishes trainer requirements and establishes how funds will be distributed to implement the new statutory requirement. The new requirements address the provision of MHFA training to educators. Specifically, THSC, Section 1001.202, requires that rules be adopted to establish requirements for a person to be approved by DSHS to train employees or contractors of LMHAs as MHFA trainers.

The new rules establish guidelines to ensure fidelity of the evidence-based practice by requiring that trainers from the LMHAs and their contractors have been certified by an entity approved by DSHS. MHFA is listed as an evidence-based practice on the Substance Abuse and Mental Health Services Administration's National Registry of Evidence-Based Programs and Practices and as such extensive research has been conducted to document the effectiveness of this intervention. As a result of these rules, a group of certified trainers will be available to the LMHAs who will provide training to educators; thereby increasing the exposure of school-aged children to professionals trained and certified in providing MHFA.

**Key Health Measures:**

Before receiving funding, each LMHA or their contractor must submit a plan to DSHS which details how the center will:

- ensure individuals are trained throughout their service area to maximize the number of children who have direct contact with an individual who has successfully completed a MHFA training program;
- meet the greatest need within their service area; and
- complement existing resources and not duplicate established MHFA training efforts.

Each year following implementation of the program, each LMHA receiving funds will provide a report to DSHS that details the number of:

- employees or contractors of the LMHA who were trained as MHFA trainers;
- educators who completed an MHFA training program offered by the authority during the preceding calendar year; and
- individuals who are not educators who completed an MHFA training program offered by the LMHA during the preceding calendar year.

It is expected that due to enhanced public awareness efforts such as MHFA, there should be an increase in referrals to the LMHAs from the schools. Additionally, as a result of services received by the LMHA there may be a decrease in school-based problems. Each year DSHS will monitor the number of youth served by the LMHAs.

**Summary of Input from Stakeholder Groups:**

Stakeholders have been involved in the implementation of the MHFA program and notified via DSHS broadcast messages on issues relating to these rules. Since the program will be carried out through the LMHAs, DSHS staff have met with the Texas Council of Community Centers to plan the implementation and review the specific requirements of the legislation and rules. The rules have been vetted through the Rules Committee of the Council on Advising and Planning for the Prevention and Treatment of Mental and Substance Use Disorders.

The rules have been distributed to the following for informal comment:

- Executive Director, Texas Council of Community MHMR Centers;
- Executive Directors, Local Mental Health Authorities;
- Executive Director, Local Behavioral Health Authority;
- Executive Director, Disability Rights Texas;
- Members of the Local Area Network Advisory Committee; and
- Members of the Council for Advising and Planning for the Prevention and Treatment of Mental Health and Substance Use Disorders.

The rules will be published in the *Texas Register* for formal comment and DSHS anticipates stakeholder support for the rules.

**Proposed Motion:**

Motion to recommend that HHSC proceed with the rulemaking process for rules contained in agenda item #4.a.

**Approved by Assistant Commissioner/Director:** /s/maples

**Date:** 2/5/2014

**Presenter:** Ross Robinson      **Program:** MHSA Program Services

**Phone No.:** 512-206-5227

**Approved by CCEA:** Carolyn Bivens

**Date:** 2/03/2014

Title 25. Health Services

Part 1. Department of State Health Services

Chapter 412. Local Mental Health Authority Responsibilities

Subchapter A. Mental Health Prevention Standards

New §§412.1 - 412.5

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §§412.1 - 412.5 concerning the criteria for approving trainers of mental health first aid (MHFA) services.

BACKGROUND AND PURPOSE

The new rules are necessary to comply with House Bill (HB) 3793, 83rd Legislature, Regular Session, 2013, which amended Health and Safety Code, Chapter 1001 by adding Subchapter H, §§1001.201- 1001.206. The proposed subchapter provides the criteria for providing grants to local mental health authorities (LMHAs) to have employees or contractors of their centers certified as trainers of MHFA and the criteria for training educators in MHFA within their local independent school districts or service areas.

The rules will specify the standards and the requirements for a person to be approved by the department to train employees or contractors of an LMHA or a local behavioral health authority (LBHA), which is a managed care organization (MCO), (collectively LMHA, LBHA and MCO are referred to in this subchapter as LMHA) as MHFA trainers.

Mental health first aid is listed as an evidence-based practice on the Substance Abuse and Mental Health Services Administration's (SAMHSA) National Registry of Evidence-Based Programs and Practices and as such extensive research has been conducted to document the effectiveness of this intervention. As a result of these rules, a group of certified trainers will be available to the LMHAs who will provide training to educators; thereby increasing the exposure of school aged children to professionals trained and certified in the provision of MHFA.

SECTION-BY-SECTION SUMMARY

Section 412.1 describes the subchapter's purpose in setting out the requirements for providing MHFA training.

Section 412.2 sets forth the subchapter's application to providers of MHFA training.

Section 412.3 sets forth the definitions that are used in the subchapter. Definitions that are proposed include the terms "department," "local mental health authority," "local behavioral health authority," "educator," "managed care organization," and "mental health first aid."

Section 412.4 sets forth the requirements for any person to receive department approval to provide training in MHFA to employees or contractors of LMHAs.

Section 412.5 sets forth the requirements for the LMHAs to ensure fidelity to the department-approved model and to ensure contractors provide MHFA training to educators and non-educators consistent with the MHFA protocols in §412.4.

#### FISCAL NOTE

Mike Maples, Assistant Commissioner for Mental Health and Substance Abuse Services, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Maples has also determined that the proposed rules will have no direct adverse economic impact on small businesses or micro-businesses. This was determined by interpretation that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

The rules have direct application only to LMHAs, none of which meet the definition of small or micro-businesses under the Government Code, §2006.001. Therefore, an economic impact statement and regulatory flexibility analysis for small businesses are not required.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There may be costs associated with the staff and contractor training requirements to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

#### PUBLIC BENEFIT

In addition, Mr. Maples has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to provide LMHAs with standards for certifying staff and contractors as trainers of MHFA and establishes the criteria for training educators in MHFA within their service areas maximizing the number of youth in schools exposed to educators trained in the MHFA protocols.

#### REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety

of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

## TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed new rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

## PUBLIC COMMENT

Comments on the proposal may be submitted to Lloyd Shangreaux, Children's Mental Health Program Services, Department of State Health Services, Mail Code 2091, P.O. Box 149347, Austin, Texas 78714-9347, telephone (512) 202-5970 or by email to [MHSArules@dshs.state.tx.us](mailto:MHSArules@dshs.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

## LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

## STATUTORY AUTHORITY

The new sections are authorized by Health and Safety Code, §534.058, which requires the department to develop standards of care for the services provided by LMHA and their subcontractors; Health and Safety Code, §1001.202, which requires that rules be adopted to establish requirements for a person to be approved by the department to train employees or contractors of LMHAs as MHFA trainers; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new sections affect Government Code, §531.0055; and Health and Safety Code, §534.058, and §1001.075.

Legend: (Proposed New Rules)  
Regular Print=Proposed new language

#### §412.1. Purpose.

The purpose of this subchapter is to set forth the standards and provide the criteria for mental health prevention training provided to local mental health authorities (LMHAs) and the local behavioral health authority (LBHA), which is a managed care organization (MCO), (collectively LMHA, LBHA and MCO are referred to in this subchapter as LMHAs), their respective contractors, and educators located within the LMHA's service area, as required by Texas Health and Safety Code, Chapter 1001, Subchapter H, §§1001.201 - 1001.206.

#### §412.2. Application.

This subchapter applies to local mental health authorities and local behavioral health authorities.

§412.3. Definitions. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Department--The Department of State Health Services (DSHS).

(2) Local mental health authority (LMHA)--An entity designated as the local mental health authority by the department in accordance with the Texas Health and Safety Code, §533.035(a). For purposes of this subchapter, the term includes an entity designated as a local behavioral health authority.

(3) Local behavioral health authority (LBHA)--An entity designated as a local behavioral health authority by the department in accordance with Texas Health and Safety Code, §533.0356.

(4) Educator--A person who is required to hold a certificate issued under the Education Code, Subchapter B, Chapter 21, specifically; a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor.

(5) Managed care organization (MCO)--An entity that has a current Texas Department of Insurance certificate of authority to operate as a Health Maintenance Organization (HMO) in the Texas Insurance Code, Chapter 843, or as an approved nonprofit health corporation in the Texas Insurance Code, Chapter 844, and that provides mental health community services pursuant to a contract with the department.

(6) Mental health first aid (MHFA)--The assistance provided to a person who is developing a mental health issue or who is experiencing a mental health crisis until appropriate professional treatment is received or until the crisis resolves.

#### §412.4. Mental Health First Aid Training Protocols.

(a) Any person approved to train LMHA employees or contractors as MHFA trainers shall be qualified to provide training in:

(1) the potential risk factors and warning signs for various mental illnesses, including depression, anxiety, trauma, psychosis, eating disorders, substance abuse disorders, and self-injury;

(2) the prevalence of various mental illnesses in the United States and the need to reduce the stigma associated with mental illness;

(3) an action plan used by employees or contractors that involves the use of skills, resources, and knowledge to assess a situation and develop and implement an appropriate intervention to assist a person experiencing a mental health crisis to obtain appropriate, professional care; and

(4) the evidence-based professional, peer, social, and self-help resources available to help individuals with mental illness.

(b) All persons or entities that train LMHA employees or contractors as MHFA trainers shall be certified by an authority of:

(1) MHFA-USA;

(2) MHFA-Australia; or

(3) other entity(s) approved by the department.

#### §412.5. Local Mental Health Authority Responsibilities.

(a) The LMHA is responsible for ensuring their contractors provide MHFA training to educators and non-educators consistent with the MHFA protocol. The LMHA shall ensure that training is taught without modification, substitution or subtraction of the MHFA-USA or MHFA-Australia, as applicable, content or format unless authorized by the department-approved training entities set forth in §412.4(b) of this title (relating to Mental Health First Aid Training Protocols).

(b) The LMHA is responsible for ensuring their contractors comply with the provisions of this subchapter and applicable provisions of the contract between the department and the LMHA.